

Date: 2/9/09

\* BEFORE THE

\* COMMISSIONER OF

\* FINANCIAL REGULATION

\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge in the captioned case having been received, read and considered, it is, by the Commissioner of Financial Regulation (the "Commissioner") this 14<sup>th</sup> day of January, 2009,

**ORDERED,**

A. That the Findings of Fact in the recommended decision be, and hereby are,  
**AFFIRMED;**

B. That the Conclusions of Law in the recommended decision be, and hereby are, **REJECTED**, and the Commissioner concludes as a matter of law that the Office of the Commissioner properly denied the Applicant's application for a mortgage originator's license. Md. Code Ann., Fin., Inst. § 11-605 (Supp. 2008);

C. That the Recommended Order be, and hereby is **AMENDED** as follows:

**ORDERED** that the Applicant's application for a mortgage originator license be, and hereby, is **DENIED**.

Pursuant to Maryland Code Ann., State Government § 10-220, the Commissioner sets forth below the reasons for modifying the Conclusions of Law and the Recommended Order.

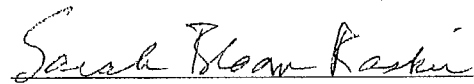
The Commissioner finds, as did the Administrative Law Judge, that the "Applicant's conviction alone is grounds to deny his application because it is an act for which a licensed mortgage originator may be disciplined. Md. Code Ann., Fin. Inst. § 11-605(b) (Supp. 2008)." The Commissioner finds that the criminal behavior that the Applicant engaged in was of a very serious nature. The crime involved a significant criminal enterprise for which the Applicant received illicit funds of between \$15,000 and \$20,000 in cash, in addition to an automobile, in connection with an operation that lasted for 12 months. The seriousness of the crime was recognized by the court which sentenced the Applicant to 57 months in federal prison and 60 months of supervised release.

The Applicant's supervised release was terminated less than two years ago. Given the seriousness of the Applicant's crime and the relatively short period since the termination of his supervised release, the Applicant does not satisfy the Commissioner that the Applicant is "of good moral character and has the general fitness to warrant the belief that the applicant will act as a mortgage originator in a lawful, honest, fair and efficient manner," a requirement for licensure under Md. Code Ann., Fin. Inst. § 11-605(a)(2). Although the Applicant's sobriety is to be lauded, the Commissioner finds that the Maryland public would not be well served by granting the Applicant's license at this time.

Pursuant to COMAR 09.01.03.09, the Applicant has the right to file exceptions to the Proposed Order and present arguments to the Commissioner. The Applicant has twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the

Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2).

Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner.

  
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Sarah Bloom Raskin  
Commissioner of Financial Regulation

FRANCISCO DIAZ,

APPLICANT

v.

COMMISSIONER OF FINANCIAL  
REGULATION

\* BEFORE SONDRAL. SPENCER,

\* AN ADMINISTRATIVE LAW JUDGE

\* OF THE MARYLAND OFFICE OF

\* ADMINISTRATIVE HEARINGS

\* OAH CASE NO: DLR-CFR-76B-08-25550

\* CFR File No: DFR-EU-2008-113

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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUE

SUMMARY OF THE EVIDENCE

FINDINGS OF FACT

DISCUSSION

CONCLUSIONS OF LAW

RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On April 10, 2008, the Maryland Commissioner of Financial Regulation (CFR), Department of Labor, Licensing and Regulation (Department), denied the Applicant's application for a mortgage originator's license. On or about May 5, 2008, the Applicant filed an appeal, after which the CFR referred the matter to the Office of Administrative Hearings (OAH) for a hearing.<sup>1</sup>

I held a hearing on August 25, 2008 at the OAH in Hunt Valley, Maryland. Assistant Attorney General Kris King represented the CFR. The Applicant represented himself.

I heard this case pursuant to section 11-518 of the Financial Institutions Article, Annotated Code of Maryland (2003). Procedure in this case is governed by the

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<sup>1</sup> The CFR delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a proposed order.

Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2008), OAH's Rules of Procedure, Code of Maryland Regulations (COMAR) 28.02.01, and COMAR 09.01.03.

### ISSUE

Did the CFR properly deny the Applicant's application for a mortgage originator's license?

### SUMMARY OF THE EVIDENCE

#### Exhibits

The CFR submitted the following documents, which I admitted into evidence:

CFR #1 – July 11, 2008 Notice of Hearing with attached certified mail receipt

CFR #2 – May 27, 2008 Delegation letter from the Department to the OAH

CFR #3 – April 22, 2008 Appeal letter from the Applicant to the CFR; Undated letter from USA Lending, LLC

CFR #4 – April 10, 2008 Notice of Denial and Right to Hearing

CFR #5 – Packet of documents containing the following:

- Financial Regulation Original Application Confirmation
- Certificate of Completion from Financial Strategies
- Receipt from the Central Justice Information System – Central Repository
- February 14, 2008 Letter from the Department to the Applicant
- Copy of the Applicant's passport
- Copy of the Applicant's Maryland driver's license
- CFR Licensing Information
- The Applicant's resume
- The Applicant's affidavit

- Employment Statement
- March 28, 2008 email from the CFR to the Applicant
- April 2, 2008 Letter to the Applicant from the United States District Court, State of Maryland, Probation & Pretrial Services Office
- Applicant's 2006 W-2 Form
- Applicant's 2007 W-2 Form
- Applicant's Earning Statements from American Lending Corp.
- Applicant's Record of Account from the Internal Revenue Service
- June 28, 2007 Letter to the Applicant from the United States District Court, State of Maryland, Probation & Pretrial Services Office
- Report and Order Termination Probation/Supervised Release Prior to Original Expiration Date
- Statement from Applicant
- United States District Court for the District of Maryland Amended Judgment
- Applicant's Maryland Criminal Record check
- Applicant's Federal Criminal Record check

The Applicant did not offer exhibits.

#### Testimony

The Applicant testified and did not present any additional witnesses.

The CFR did not present witnesses.

#### **FINDINGS OF FACT**

I find the following facts by a preponderance of the evidence:

1. On February 5, 2008, the Applicant filed an internet application for a mortgage originator's license with the CFR. As part of the application process, the Applicant disclosed his criminal history.

2. That history included the Applicant having pleaded guilty to conspiracy to distribute and possess with intent to distribute controlled substances on July 12, 2001 in the United States District Court for the District of Maryland. The Applicant was sentenced to 57 months in federal prison and supervised release for 60 months. The Applicant was released from prison on April 8, 2004 to a re-entry program that allowed him to leave the program daily for work. On September 20, 2004, the Applicant was released from the re-entry program to supervised release. On June 18, 2007, the Applicant's supervised release was terminated early because of good behavior.
3. The conspiracy to distribute and possess with intent to distribute controlled substances involved the Applicant's role in introducing parties who transported marijuana and cocaine between Maryland and California. The Applicant received between \$15,000.00 to \$20,000.00 in cash and a car for the 12 months that the distribution operated. A co-conspirator identified the Applicant.
4. At the time of the Applicant's criminal activity, he used marijuana and cocaine. The Applicant has been drug free since December 25, 1998 and attended a nine-month drug program and Alcoholics Anonymous while in prison.
5. The Applicant worked for American Lending Corporation from April 2004 until the company closed in February 2008. The Applicant worked as a loan officer and generated loans in Maryland and Virginia until January 1, 2007 when Maryland required that loan originators be licensed. The Applicant continued to generate loans in Virginia until recently when Virginia required that loan originators be licensed. The Applicant has applied for a loan originator's license

in Virginia.

6. The Applicant currently works for USA Lending, LLC, where he is a reliable, motivated, responsible, and valued employee.

### DISCUSSION

The Applicant applied for a mortgage originator's license.<sup>2</sup> The CFR denied the application on the grounds that he does not possess good moral character and a general fitness to warrant the belief that he will act as a mortgage originator in a lawful, honest, fair, efficient manner, as required by section 11-605(a)(2) of the Financial Institutions Article; and he committed an act that if committed as a mortgage originator would have been grounds for suspension or revocation of an originator's license, as provided in section 11-605(b) of the Financial Institutions Article (Supp. 2008). The underlying basis for the CFR's decision is the Applicant's 2001 conviction for conspiracy to distribute and possess with intent to distribute controlled substances.

The Applicant's conviction alone is grounds to deny his application because it is an act for which a licensed mortgage originator may be disciplined. Md. Code Ann., Fin. Inst. § 11-605(b)(Supp. 2008). The CFR may take disciplinary action against a licensee

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<sup>2</sup> Maryland law defines a mortgage originator as an individual who:

- (i) Is an employee of a mortgage lender that:
    1. Is a mortgage broker as defined in § 11-501(h) of this title; or
    2. Has or will have a net branch office at or out of which the individual works or will work;
  - (ii) Directly contacts prospective borrowers for the purpose of negotiating with or advising the prospective borrowers regarding mortgage loan terms and availability;
  - (iii) Receives from the mortgage lender compensation that is calculated:
    1. As a percentage of the principal amount of mortgage loans originated by the individual; or
    2. As a percentage of the interest, fees, and charges received by the mortgage lender that result from mortgage loan transactions originated by the individual; and
  - (iv) Is authorized to accept a loan application on behalf of the mortgage lender.
- (2) "Mortgage originator" does not include an individual who:
- (i) Owns a 25 percent or more interest in the mortgage lender; or
  - (ii) Is licensed under Subtitle 5 of this title.

Md. Code Ann., Fin. Inst., § 11-601(k)(1) and (2) (Supp. 2008).



if the licensee “[i]s convicted under the laws of the United States or of any state of . . . [a] felony; or . . . [a] misdemeanor that is directly related to the fitness and qualification of the person to engage in the mortgage lending business” and “[o]therwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently.” Md. Code Ann., Fin. Inst. §§ 11-517(a)(2) and (a)(5) (Supp. 2008).

Although the CFR has grounds to deny the Applicant’s application, I propose that the Applicant’s application be granted. The CFR argues that not enough time has lapsed between the Applicant’s criminal activity and now. I disagree. The Applicant’s conviction was over seven years ago. Since that time, he has been incarcerated, lived in a halfway house and had his supervised release terminated early due to good behavior. The Applicant has not been supervised since June 2007. Since his release from incarceration in April 2004, the Applicant has worked in the mortgage industry as a loan originator in Maryland and Virginia until January 1, 2007, when Maryland required the licensing of loan originators. The Applicant continued to work as a loan originator until recently when Virginia also instituted licensing for loan originators. The Applicant is currently employed with a mortgage company. His employer described him as a dedicated professional who had made amends for his past mistakes.

The CFR concluded that the Applicant was not sufficiently rehabilitated for licensure. In deciding whether a disbarred lawyer was sufficiently rehabilitated for licensure, the Court of Appeals identified four factors to consider:

- the nature and circumstances of the original misconduct;
- petitioner’s subsequent conduct and reformation;
- his present character; and

his present qualifications and competence to practice law.

*In re Braverman*, 271 Md. 196, 199-200 (1974); *In re Barton*, 273 Md. 377, 379-380 (1974). In applying those factors to the Applicant's case, I conclude that he has been sufficiently rehabilitated.

The Applicant's criminal behavior involved drugs, not conduct related to financial or business dealings. The Applicant has been drug-free since December 1998. At the time of the hearing, the Applicant had not been supervised for over one year. Additionally, his supervised release had been terminated early because of good behavior. The Applicant is certainly qualified and competent to be a loan originator because he has been one from 2004 or until licensing requirements were instituted in Maryland in January 2007. Thus, since his release from incarceration, the Applicant has engaged in the mortgage business without any untoward conduct. Not only has there been sufficient time between the Applicant's criminal conduct and now; there has also been sufficient time to evaluate the Applicant's character and competence since his conviction. The Applicant's conduct since his release from incarceration four years ago and his release from supervision one year ago provide sufficient evidence of the Applicant's reformation and character. The Applicant has been a productive member of society working in the mortgage field since 2004.

Consequently, I propose that the Applicant's application be granted.

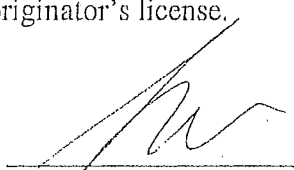
#### **CONCLUSIONS OF LAW**

I conclude as a matter of law that the CFR improperly denied the Applicant's application for a mortgage originator's license. Md. Code Ann., Fin. Inst., §11-605 (Supp. 2008).

**RECOMMENDED ORDER**

**I RECOMMEND** that the Maryland Commissioner of Financial Regulation grant the Applicant's application for a mortgage originator's license.

November 14, 2008  
Date Decision Mailed

  
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Sondra L. Spencer  
Administrative Law Judge

Doc #100803